

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,

No. 04-2338 RSM

Plaintiffs,

v.

**DEFENDANTS' MOTION TO
COMPEL PLAINTIFFS FLEMING
AND DOE's ANSWERS TO
FIRST INTERROGATORIES
AND REQUESTS FOR
PRODUCTION**

THE CORPORATION OF THE
PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS, a Utah corporation sole, a/k/a
"MORMON CHURCH"; LDS SOCIAL
SERVICES a/k/a LDS FAMILY SERVICES,
a Utah corporation,

***Note on Motion Calendar:
April 29, 2005***

Defendants.

I. RELIEF REQUESTED

Defendants move this court for an order compelling plaintiffs Fleming and Doe to provide full and complete responses to all written Interrogatories and Requests for Production.

II. STATEMENT OF FACTS

This lawsuit arises out of injuries allegedly sustained by plaintiffs when they were allegedly sexually abused by a Mr. Jack LoHolt, while he was allegedly assisting in

DEFDANT COP'S MOTION TO COMPEL FLEMING
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STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

601 Union Street, Suite 3100

Seattle WA 98101.1374

TEL 206.623.9900 FAX 206.624.6885

1 scouting activities associated with a troop of the Boy Scouts of America ("BSA")
2 sponsored by defendant COP. Plaintiffs allege that defendant COP failed to take
3 reasonable action to prevent the sexual abuse from occurring; defendant COP denies
4 plaintiffs' allegations.

5 In furtherance of discovery, defendants properly propounded its First
6 Interrogatories and Requests for Production of Documents, pursuant to FRCP 33 and
7 34. This discovery was mailed to plaintiffs attorneys on February 15, 2005, and
8 plaintiffs' responses were due Monday, March 21, 2005.

9 After waiting one week, attorneys for defendants conferred by telephone with
10 Michael Pfau on March 28, 2005, and agreed to extend the deadline for full and
11 complete responses to Tuesday, April 5, 2005. (See accompanying Declaration of
12 Marcus B. Nash, ¶ 3.) Despite agreeing to submit answers by April 5, 2005, plaintiffs
13 have failed to do so; to date, no answers have been received.

14 Plaintiffs' failure or refusal to provide Answers to Interrogatories and Request for
15 Production in accordance with FRCP 33 and 34 is causing unnecessary and
16 unreasonable delay in the discovery which defendant COP is entitled to conduct,
17 particularly in light of the case schedule established by this court. Before defendant can
18 be prepared to depose plaintiffs, an essential step in preparing this case for trial, the
19 interrogatories and requests for production must be answered.

20 III. STATEMENT OF ISSUES

21 Should the court: (a) order plaintiffs to provide full and complete responses to
22 defendants discovery request within five (5) days of the date of the order granting this
23 Motion to Compel is granted, and (b) award terms (per FRCP 37(a)(2), (4)(A) and GR 3)

1 against plaintiffs and their counsel for failing to submit answers to discovery despite
2 reasonable accommodation and liberal extension of time?

3 **IV. EVIDENCE RELIED UPON**

4 1. Defendants rely on the Declaration of Marcus B. Nash and the documents
5 attached hereto.

6 **V. AUTHORITY**

7 FRCP 33(b)(1) and (3) state:

8 (1) Each Interrogatory shall be answered separately and fully in writing
9 under oath, unless it is objected to, in which event the objecting
10 party shall state the reasons for objection and shall answer to the
11 extent the interrogatory is not objectionable.

12 ...

13 (3) The party upon whom the interrogatories have been served shall
14 serve a cop of the answers, and objections if any, within 30 days
15 after the service of the interrogatories.

16 Likewise, FRCP 34(b) provides in pertinent part:

17 The party upon whom the request is served shall serve a written
18 response within 30 days after the service of interrogatories...

19 Each of these rules anticipate discovery disputes and provide that the parties may move
20 for an order resolving such dispute under Rule 37(a). (See, FRCP 33(b)(5); 34(b).) In
21 accordance with FRCP 37(a), defendant COP moves this court for an order compelling
22 discovery and appropriate sanctions.

23 There is nothing unusual or complex about the discovery requests propounded
upon plaintiffs. As the attached exhibits document, counsel for defendants has granted
plaintiffs more than adequate extension time in which to respond. Plaintiffs' apparent
reluctance to participate in legitimate discovery frustrates the process of discovery in

1 this case. Defendants are entitled to complete and timely responses so that discovery
2 may proceed and defendants may be prepared for trial.

3 Defendants respectfully request that sanctions be awarded because defendants
4 have been forced to prepare and file this motion to compel on account of plaintiffs'
5 sustained refusal or failure to participate in discovery.

6 **VI. PROPOSED ORDER**

7 A Proposed Order is attached.

8 **VII. CONCLUSION**

9 Based upon the foregoing analysis of law and argument, defendant respectfully
10 requests that his court grant its motion to compel answers to discovery and award
11 appropriate sanctions (both monetary and waiver of objections).

12 DATED this 12th day of April, 2005.

13 s/ Thomas D. Frey via ECF
14 Thomas D. Frey, WSBA #1908
E-mail: tfrey@staffordfrey.com

15 s/ Marcus B. Nash via ECF
16 Marcus B. Nash, WSBA #14471
Email: mnash@staffordfrey.com

17 STAFFORD FREY COOPER
18 601 Union Street, Suite 3100
Seattle, WA 98101
19 Telephone: (206) 623-9900
Fax: (206) 624-6885

20 Attorneys for Defendants
21
22
23

CERTIFICATE OF SERVICE

I certify that on the date noted below I electronically filed ***Defendant COP's Motion to Compel Plaintiffs Fleming and Doe's Answers to Interrogatories and Requests for Production*** using the CM/ECF system which will send notification of such filing to the following persons:

Michael T. Pfau
Gordon Thomas Honeywell Malanca Peterson & Daheim
600 University Street, Suite 2100
Seattle, WA 98101-4185
Email: mpfau@gth-law.com
Attorneys for Plaintiffs

Timothy D. Kosnoff
Law Offices of Timothy D. Kosnoff
600 University Street, Suite 2100
Seattle, WA 98101
Email: timkosnoff@comcast.net
Attorneys for Plaintiffs

DATED this 12th day of April, 2005, at Seattle, Washington.

/s/ Mary Ann Jarrett
Mary Ann Jarrett

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AND DOE's ANSWERS TO INTERROGATORIES AND
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